IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T.

HARKA RAM. V. THE STATE OF RAJASTHAN

S. B. CRIMINAL APPEAL NO.617/2002,
against the Judgment dated 02.07.2002, passed by Shri Ajai Kumar Jain, Additional Sessions Judge No.2, Jodhpur, in Sessions Case No.5/99 (State v. Harkaram).

DATE OF JUDGMENT: 22.03.2006

PRESENT

HON'BLE MR. JUSTICE R. P. VYAS

Mr.P.N.Mohnani, for Appellant.
Mr.V.R.Mehta, Public Prosecutor, for the State of Rajasthan.

BY THE COURT:

This criminal appeal is directed against the Judgment dated 02.07.2002, passed by the Additional District & Sessions Judge No.2, Jodhpur, whereby accused-appellant Harkaram has been sentenced under Section 307, IPC, to five years' Rigorous Imprisonment and a fine of Rs.10,000/-, in default of payment of fine to further undergo 1 year's Rigorous Imprisonment; under Section 324, IPC, 1 year”s Rigorous Imprisonment and a fine of

Rs.2,000/- and in default of payment of fine to further suffer 3 months' Rigorous Imprisonment; and under Section 498-A, IPC, 1 year's Rigorous Imprisonment and a fine of Rs.5,000/-, in default of payment fo fine to further undergo 3 months' Rigorous Imprisonment. All the sentences were directed to run concurrently. It has also been ordered by the learned Additional District & Sessions Judge, Jodhpur that under Section 357, Cr.P.C., out of the amount of fine imposed on the accused Harkaram, a sum of Rs.15,000/- may be paid to Smt.Munki as compensation.

Brief facts, giving rise to the instant criminal appeal, are that on 6.09.1998, Mangilal lodged a report (Ex.P-2) with the Police Station, Dechu (Jodhpur) that four years ago, his daughter – Smt.Munki was married to Harkaram s/o. Gurubachan Ram, by caste Mali, R/o. Kallau Rela, Tehsil – Shergarh. The 'Gona' of Smt.Munki was performed after one year of the marriage. It is further alleged in the report (Ex.P-2) that the date of birth of his daughter Smt.Munki is 01.01.1979 and she is about 21 years old. She has studied upto Class V. After performing 'Gona' and sending to her in-laws' house, a female issue was born out of the wedlock. Thereafter, his son-in-law started to harass and beat his daughter. The reason for beating was that why she talks with her Jethani (elder brother's wife of accused-appellant Harkaram). The beating and harassment continued. It was also averred in

the report (Ex.P-2) that about two months ago from the date of lodging the aforesaid report, i.e., 16.09.1998, when his son-in-law gave beating to his daughter, he brought her to village Bagoria. Thereafter, when the father-in-law and uncle-in-law of his daughter came to take her, a protest, with regard to ill-treatment being given to his daughter by her husband – Harkaram, was lodged to them, but they expressed their inability to make Harkaram understand. It was also averred in the complaint that on 17.08.1998, Mangilal took his daughter Smt.Munki to her in-laws' house and again lodged a protest with the father-in-law and uncle-in-law of Smt.Munki with regard to unnecessary beating being given to his daughter Smt.Munki by her husband – Harka Ram. Then they assured him that now, they will look after the matter and Smt.Munki will not be given any beating by her husband – Harkaram. Thereafter, he returned to village Bagoria. On 15.09.1998, at 1.00 P.M., one Kotharam – Jeth of Smt.Munki (victim) came to Mangilal Bhati (the father of victim) and informed about the ill health of Smt.Munki. He also informed that Smt.Munki is hospitalised in Jodhpur. Then, he immediately rushed to the Hospital and found that his daughter – Smt. Munki was admitted in the Emergency Ward. His daughter Smt.Munki told him that at her in-laws' house, she was given beating and was administered medicine in a glass. Thereafter, she became unconscious. When he enquired

about the 'medicine', her Jeth told that he does not know as to which was the 'medicine', but he has thrown away the glass by which medicine was given. He also pleaded ignorance whether the 'medicine' was administered or she (Smt.Munki) took herself it.

On the basis of the aforesaid report, the Police registered a case on 16.09.1998, under Sections 498-A and 323, IPC, and investigation commenced. The accused was arrested on 11.10.1998.

After completing the necessary investigation, challan was filed against the accused-appellant under Sections 498-A, IPC, 307, IPC and 324, IPC in the Court of Judicial Magistrate, Balesar. He, in turn, committed the case to the Court of the Additional Sessions Judge No.2, Jodhpur, for trial.

The learned Additional Sessions Judge No.2, Jodhpur framed charges against the accused under Sections 307 and 324, IPC. The accused denied the charges and claimed trial.

In support of its case, the prosecution examined as many as 21 witnesses (P.W.1 to P.W.11) and produced 11 documents (Ex.P-1 to Ex.P-11). In defence, accused examined one witness (D.W.1). In the explanation under Section 313, Cr.P.C., the accused denied all the charges and evidence appearing against him and stated that he has been falsely implicated.

After hearing the submissions of the learned counsel for the parties, the learned Additional Sessions Judge No.2, Jodhpur, vide her judgment dated 27.03.2000, acquitted the accused Harkaram of the charges under Sections 307 and 324, IPC.

Being aggrieved with the Judgment dated 27.03.2000, passed by the learned Additional District & Sessions Judge No.2, Jodhpur, Mangilal S/o.Bhikha Ram, who is father of the victim (Smt.Munki), preferred S.B. Criminal Revision Petition No.290/2000 (Mangilal v. The State of Rajathan & Another) in the Rajasthan High Court, Jodhpur, on 21.06.2000. The said Revision Petition was dismissed by the learned Single Judge of this Court vide his order dated 05.07.2000.

Against the order dated 05.07.2000, passed by the learned Single Judge of this Court, the said Mangilal preferred Criminal Appeal No.1064.2001 (Arising out of SLP (Criminal) No.32/2001) (Mangilal v. State of Rajasthan & Another) in the Supreme Court of India, where Leave was granted and the said appeal preferred by Mangilal was decided by the Hon'ble Supreme Court vide Judgment dated 18.10.2001. The operative portion of the Judgment dated 18.10.2001 reads as under :-

> "In this view of the matter, the order of the trial court acquitting the 2nd Respondent cannot be sustained and is set aside. The accused Respondent

> No.2 is held guilty of offences under Sections 307, 324 and 498-A of the Indian Penal Code. The 2nd Respondent will have to be heard on the question of sentence to be imposed on him. We, therefore, send the matter back to the Second Additional District & Sessions Judge for hearing the 2nd Respondent on the quantum of sentence and for imposing the necessary sentence in accordance with law.
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> The Appeal stands disposed of accordingly. Needless to state that the impugned order is also set aside. There will be no order as to costs."

In compliance with the Judgment of the Hon'ble Supreme Court, passed on 18.10.2001, the matter was sent to the Court of the Additional District & Sessions Judge No.2, Jodhpur for hearing the 2nd Respondent (Harkaram) on the quantum of sentence.

The matter was registered in the Court of the Additional District & Sessions Judge No.2, Jodhpur as Sessions Case No.5/99 (State of Rajasthan v. Harkaram S/o. Gurubachan Ram).

The submissions of both the learned counsel for the parties were heard. After hearing the submissions, on the quantum of sentence, the learned Additional District & Sessions Judge No.2, Jodhpur, vide his Order dated 02.07.2002 sentenced accused Harkaram under Section 307, IPC, to five years' Rigorous Imprisonment and a fine of Rs.10,000/-, in default of payment of fine to further undergo 1 year's Rigorous Imprisonment; under Section 324, IPC, 1 year's Rigorous

Imprisonment and a fine of Rs.2,000/-, in default of payment of fine to further undergo 3 months' Rigorous Imprisonment; and under Section 498-A, IPC, 1 year's Rigorous Imprisonment and a fine of Rs.5,000/-, in default of payment of fine to further undergo 3 months' Rigorous Imprisonment. All the sentences were directed to run concurrently. Out of the aforesaid amount of fine, a sum of Rs.15,000/- was awarded as compensation to Smt. Munki (the victim) under Section 357 of the Code of Criminal Procedure.

Being aggrieved by the Order dated 02.07.2002, passed by the leanred Additional District & Sessions Judge No.2, Jodhpur, accused -appellant Harka Ram has preferred the instant criminal appeal, which was registered in the High Court on 02.08.2002 as S.B.Criminal Appeal No.617/2002 (Harka Ram v. State of Rajasthan).

It is submitted by the learned counsel for the appellant that the learned trial Court has grossly erred in law while passing the sentence for the offence under Section 498-A, IPC, as neither he has been charged, nor tried for the said offence.

It is further submitted by the learned counsel for the appellant that the learned trial Court has not appreciated the evidence on record properly and has wrongly sentenced the

appellant under Sections 307 and 324, IPC, whereas PW 9 Dr.N.S.Kothari, who examined Smt.Munki, did not find any external or internal injury on her body. With regard to chemical report (Ex.P-8), he was of opinion that there was organo – phosphorous insecticide poison in the blood and gastric liquid which, according to him, was dangerous to life. Thus, according to the learned counsel, the accused-appellant cannot be sentenced for the offence under Section 324, IPC.

It is also submitted by the learned counsel for the appellant that the sentence of five years' Rigorous Imprisonment awarded by the learned trial Court under Section 307, IPC, is excessive. Smt.Munki has re-married and is leading a happy marital life. The accused has ailing father of 70 years and the accused is the only earning member in the family.

Lastly, it is submitted by the learned counsel for the appellant that the accused is a petty labour and his financial condition is poor, so, order of compensation, after the marriage of the wife, is unwarranted and exhorbitant and, in view of the facts and circumstances of the instant case, the compensation may be set aside.

On the other hand, the learned Public Prosecutor has supported the impugned judgment dated 02.07.2002, passed by the learned trial Court.

It is submitted by the learned Public Prosecutor that the learned trial Court has taken into consideration all the aspects of the case objectively and, after subjective satisfaction, has awarded the sentence to the accused-appellant under Sections 307, 324 and 498-A, IPC respectively which is reasonable, just and proper.

It is also submitted by the learned Public Prosecutor that looking to the peculiar facts and circumstances of the case, the learned trial Court under Section 357, Cr.P.C., has rightly awarded a compensation of Rs.15,000/- to Smt.Munki, as the accused-appellant has treated Smt.Munki with cruelty and has tried to do her away by administering poison. So, in such a situation, according to the learned Public Prosecutor, the trial Court was perfectly right in awarding sentence to the accused appellant, with a suitable fine.

Heard learned counsel for the parties.

So far as the contention of the learned counsel for the appellant that the trial Court has grossly erred in awarding sentence to the accused-appellant under Section 498-A, IPC, is concerned, it may be pointed that the Police has filed charge sheet against the accused under Section 498-A, IPC along with Sections 307 and 324, IPC, respectively. Apart from that, the Hon'ble Supreme Court, in its Judgment dated 18.10.2001,

particularly with reference to the deposition of PW 6 Smt.Munni has observed that she was being beaten by her husband (Harka Ram) regularly. Not only this, even on one occasion, when she was conceiving with a 7 months' old child, she had been beaten so badly that the child died in the womb and she remained ill for 15 days. It may be pointed out that the limit of the cruelty reached to its extreme position when the accused held the nose of the victim (the wife) and poured the poison into her mouth, forcing her to take two or three sips of poison. Thereafter, she remained conscious for ten minutes and then starting vomitting. She also deposed in her statement that when her father came to see her in the hospital, she had informed him that the poison was administered to her by her husband. In the cross-examination, her testimony has not been shaken at all, even though there has been lengthy and detailed cross-examination. It will not be out of place to mention here that the Hon'ble Supreme Court has also held the accused guilty of offence under Section 498-A, IPC. In this view of the matter, the contention of the learned counsel for the accused-appellant that the trial Court has grossly erred in awarding sentence to the accused-appellant Harka Ram under Section 498-A, IPC, is not sustainable in the eye of law.

With regard to the further contention of the learned counsel for the accused-appellant that the learned trial Court has

not appreciated the evidence on record properly and wrongly sentenced to the accused-appellant under Sections 307 and 324, IPC, as Dr.N.S.Kothari (P.W.9), who examined Smt.Munki, did not find any external or internal injury on her body, it may be mentioned that Hon'ble Supreme Court has clearly observed in its judgment that Dr.N.S.Koharri who examined the victim, has specifically deposed that the chemial examination disclosed that an insecticide poison namely, organo-phosphorous, which was dangerous life, was found present in gastric lavage and blood sample. He also deposed that if the treatment had not been given in time, Smt.Munki (the victim) would have died. The result of the chemical examination report shows that portion of blood sample and gastric lavage gave positive tests for the presence of Organophosphorous Insecticide. Thus, the poison dangerous to life was found in the body of Smt.Munki which stands proved beyond all reasonable doubts from the result of the chemical examination report. Apart from that, Hon'ble Supreme Court has observed in its judgment that Smt.Munki has deposed in clear term that her husband (accused Harka Ram) had held her nose and poured the poison into her mouth, forcing her to take two or three sips of poison. This is a direct evidence against the accused-appellant and further, it stands corroborated by the medical evidence. Thus, the accused acted with such intention or knowledge that such type of his act would definitely

result into her death. Hon'ble the Supreme Court also noticed the statement of Dr.N.S.Kothari, in which he has deposed that if the treatment had not been given in time, Smt.Munki would have died. In view of the above position, the contentions of the learned counsel for the accused-appellant are not sustainable in the eye of law.

With regard to the last limb of argument of the learned counsel for the accused-appellant that Smt.Munki has re-married; that accused-appellant is the only earning member in the family; that he has an ailing father of 70 years old and the financial condition of the accused is poor as he is a petty labour, suffice it to say that these grounds are not adequate, convincing and sufficient to persuade this Court to set aside the sentences awarded to the accused-appellant and reduce the amount of compensation, as undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of the Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed by the accused.

Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some

significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle consideration of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and some times even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and creates cases of apparent injustice that are serious and widespread.

It is pertinent to point out here that the proportion between the crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times.

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been

committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in **Dennis Councle McGautha v. State of California [402 US 183 : 28 L Ed 2nd 711 (1971)]** that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess the various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

In **Dhananjoy Chatterjee v. State of West Bengal (1994 SCC (Cri.) 358),** it has been observed that a shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminal and in the ultimate, making justice suffer by weakening the system's credibility. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the court reflect public abhorrence of the crime. The court must not only keep in view the rights of the

criminal, but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. Similar view has been expressed by their Lordships Supreme Court in **Ravji v. State of Rajasthan [(1996) 2 SCC 175]** that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to an be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

The punishment must fit the crime and it is the duty of the court to impose a proper punishment depending on the degree of criminality and desirability for imposing such punishment.

The rationale for advocating the award of a punishment commensurate with the gravity of the offence and its impact on society, is to ensure that a civilised society does not revert to the days of "an eye for an eye and a tooth for a tooth". Not awarding a just punishment might provoke the victim or its

relatives to retaliate in kind and that is what exactlyis sought to be prevented by the criminal justice system we have adopted.

In the time of Kautilya, the need for awarding just punishment was recognised. According to Kautilya, 'Whoever imposes severe punishment becomes repulsive to people, while he who awards mild punishment becomes contemptible. The ruler just with the rod is honoured. When deserved punishment is given, it endows the subjects with spiritual good, material well-being and pleasures of the senses." This philosophy is woven into our statute and our jurisprudence and it is the duty of those who administer the law to bear this in mind.

It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, the courts cannot forget their duty to society and the victim. The court has to consider the plight of the victim which ruins all prospects of a normal life for the victim. A court cannot afford to forget these aspects while imposing a punishment on the aggressor. The court has to do justice to society and the victim on the one hand and to the offender on the other. The proper balance must be taken to have been struck by the legislature. Hence, the legislative wisdom reflected by the statute has to be respected by the Court and the permitted departure therefrom made only for compelling and convincing reasons.

It may be mentioned that undue sympathy to impose

inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society cannot long endure under serious threats. If the courts do not protect the victim/injured, the victim/injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

It may also be mentioned that in order to exercise the discretion of reducing the sentence, the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated.

It has been very clearly established as observed by the Apex Court in the impugned judgment that the appellant has committed the offences of cruelty with his wife. He has also hold her nose and poured the poison into her mouth, forcing her to take two or three sips of poison with intent to commit her murder, which is an extreme position of harassment and cruelty. All these aspects have been taken into consideration by the Hon'ble Supreme Court while convicting the appellant under

Sections 307, 324 and 498-A, IPC, and, thereafter, the matter has been sent back to the trial Court for imposing necessary sentence in accordance with law.

It may be mentioned that the Hon'ble Supreme Court has set aside the order of the trial Court dated 27.03.2000, by which the accused Harka Ram was acquitted of the offences under Sections 307 and 324, IPC. It may also be mentioned that vide Judgment dated 18th October, 2001, passed in Criminal Appeal No.1063/2001 (Mangilal v. The State of Rajasthan & Another), the Hon'ble Supreme Court has granted Special Leave to Appeal and the accused-appellant Harka Ram S/o. Guru Bachhan Raj has been held guilty of offences under Sections 307, 324 and 498-A, IPC.

Thus, it is clear from the aforesaid order of the Hon'ble Supreme Court that the matter was sent back to the trial Court – Additional District & Sessions Judge No.2, Jodhpur for hearing the accused Harka Ram and passing the order on the quantum of sentence, as the accused Harkaram has already been held guilty for the offences under Sections 307, 324 and 498-A, IPC by the Apex Court. Thus, in the light of the order of the Hon'ble Supreme Court, the learned counsel for the accused Harkaram has been given full hearing and learned Additional Public Prosecutor has also been heard on the quantum of sentence and

after taking into consideration all the facts and circumstances of the case, particularly the cruel treatment given by accused to Smt.Munki and unsuccessful attempt to administer her poison, the trial Court has rightly awarded sentence to the accused-appellant Harkaram for the offences under Sections 307, 324 and 498-A, IPC, with fine. Apart from that, under Section 357, Cr.P.C, Smt.Munki has rightly been awarded suitable compensation of Rs.15,000/-, out of the fine imposed on the accused-appellant Harkaram. The order of sentence passed by the learned Additional District & Sessions Judge No.2, Jodhpur is perfect and based on sound reasonings.

After evaluating, scrutinizing and examining the material available on record and considering the respective submissions of the learned counsel for the parties, I am of opinion that there appears to be no special or adequate reasons, warranting interference by this Court with the order dated 2.7.2002, passed by the learned trial Court. Apart from that, the grounds raised by the learned counsel for the accused-appellant that the accused is a petty labour, his ailing father is 70 years old and Smt.Munki has remarried are neither convincing nor based on sound reasonings. The Court is required to award the proper sentence, having regard to the peculiar facts and circumstances of each case, coupled with the nature of the offence and the manner in which it was committed, as it is gospel truth that the

man may tell lie but not the circumstances.

I find no illegality, infirmity or perversity in the order of sentence dated 2.7.2002, passed by the learned Additional District & Sessions Judge No.2, Jodhpur. Hence, no interference is called for with the order dated 2.7.2002 passed against the accused-appellant Harka Ram.

Consequently, the appeal fails and is liable to be dismissed. The same is, therefore, dismissed.

(R.P.VYAS),J.

Scd.